Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Provision of Directory Listing Information Under the Communications Act of 1934, As Amended	)	CC Docket No. 99-273
	)	
The Use of N11 Codes and Other Abbreviated Dialing Arrangements	)	CC Docket No. 92-105
	)	
Administration of the North American Numbering Plan	)	CC Docket No. 92-237

COMMENTS OF TELEGATE, INC.

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Telegate, Inc. (Telegate), by its attorneys, submits the following comments in response to the Notice of Proposed Rulemaking (*NPRM*) issued by the Federal Communications Commission (FCC) in the above-referenced proceeding.[1]

I. INTRODUCTION AND SUMMARY

Telegate is the American subsidiary of Telegate AG, a competitive provider of directory assistance (DA) services in Germany. In the few short years since Germany opened DA to effective competition, Telegate AG has won nearly a third of the German DA market from the incumbent provider by offering innovative services, superior customer service and improved accuracy, as well as by reaching out to unserved or underserved communities. Telegate now seeks to bring this same innovation and

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[1] *In re Provision of Directory Listing Information Under the Communications Act of 1934, As Amended*, Notice of Proposed Rulemaking, CC Docket Nos. 99-273, 92-105, 92-237, FCC 01-384 (rel. Jan. 9, 2002).

commitment to quality to the U.S. market. In fact, Telegate has already taken the first step by rolling out a fully bilingual (Spanish and English) call center in San Bernardino, California.

In entering the U.S. market, however, Telegate has found that it and other competitive providers are effectively locked out of the multi-billion dollar retail wireline DA business[2] because of the incumbent local exchange carriers' (LECs') monopoly control over 411. Currently, customers typically access DA services by dialing 411, which connects them to the DA service provided by their LEC. The incumbent LECs serve over 90% of all local exchange customers.[3] The incumbent LECs' control over the local exchange market, combined with their control over the 411 code, allows them to maintain a stranglehold over DA,[4] despite the fact that the incumbent LECs have a reputation for poor service and poor accuracy[5] and have failed to expand their DA

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[2] *See*, *e.g.*, Frost & Sullivan Report (attached in relevant part to Qwest *ex parte* letter filed in CC Dkt. No. 99-273 (May 24, 2001)) at 46, figure 13 and at 52, figure 16 (estimating that wireline DA revenues in the U.S. totaled $3.53 billion in 2001).

[3] *See Local Telephone Competition: Status as of June 30, 2001*, Industry Analysis Division, Common Carrier Bureau, Table 1 (Feb. 2002).

[4] *See*, *e.g.*, Peter S. Goodman, *Verizon Hikes Charge for National 411*, Washington Post, May 22, 2001, E1 (explaining how incumbents are able to take advantage of their large customer bases "and decades of consumer conditioning that the way to gain an unknown telephone number is to dial 411").

[5] *See*, *e.g.*, *Information Operators Often Get It Wrong, Survey Says*, Associated Press, June 18, 2000 ("A survey shows information operators give out wrong numbers or can't find the number at all in about one out of three cases."); Jim Frost, *4-1-1 Mistakes Cost Callers Millions: Need the Numbers For Yellowstone National Park? Or Even Comiskey? Try Again*, Chicago Sun-Times, June 18, 2000 ("At least one out of three calls to directory assistance resulted in a wrong number, in a test by the Chicago Sun-Times."); Kathy Lynn Gray, *Accuracy Suffers Under New System Mistakes Costing Consumers Plenty*, The Columbus Dispatch, Sept. 11, 2000 (estimating that inaccurate DA information is "costing consumers $300 million a year" based on the industry's own accuracy figures); John Williams, *Regulators Have Directory Assistance's Number*, The

offerings beyond the most basic number-retrieval services. As a result, the market for DA services is stagnating. Competitors' unsuccessful efforts to provide alternative DA services using 10-10-XXX demonstrate the difficulty most entrants face in overcoming the advantages the incumbent LECs enjoy due to their control of the local market and 411. The fact that many customers now prefer dialing 411 for national DA instead of NPA-555-XXXX shows that even large, well established competitors, such as interexchange carriers, are likely to lose market share so long as incumbent LECs retain their monopoly over 411.[6] The Commission can, and should, rectify this situation by opening DA services to competition.

Fortunately, European regulators have provided a roadmap for attaining of this important goal. Experience in Europe shows that the only effective way to introduce competition for DA is to put all providers on an equal footing. In the United States, this means eliminating the incumbents' inherent advantage by opening the 411 code to competitors – either through presubscription or through the introduction of a new 411-based dialing code, such as 411XY, that would be assigned to all DA providers, including incumbent LECs. The relatively minor one-time costs of making these changes are far outweighed by the ongoing, long-term benefits they will produce, including:

- Increased innovation;
- Better service;

Houston Chronicle, Aug. 20, 2000 (citing estimates that consumers "waste $1 million daily on bad directory information."); Pat Morrison, *Numbering the Frustrations of 411*, Los Angeles Times, Sept. 24, 2000.

[6] *See* Frost & Sullivan at 51, 52 (noting that the BOCs' provision of 411 national DA has enabled them to cut into interexchange carriers' long distance directory service revenues derived from 1+NPA-555-1212).

- Improved accuracy; and
- Introduction of service to unserved markets.

These improvements will benefit consumers, competitive providers and incumbents alike. For example, in Ireland,[7] competitors were able to capture 30% of the DA market by bringing improved service to customers, and in so doing they pushed the incumbent to improve its service as well. The resulting increase in demand enabled the incumbent to increase its DA revenues even while it lost share.

By enabling robust competition for retail DA services, the FCC can further the pro-competitive goals of the Communications Act, while expending only minimal administrative resources. Removing the incumbent LECs' monopoly on 411 will open the wireline DA market to competition without requiring burdensome regulation or ongoing compliance monitoring. The Commission should take this opportunity to bring the benefits of competition to DA customers by implementing 411 presubscription, or alternatively, by replacing 411 with a new 411XY numbering scheme.

II. EXPERIENCE IN EUROPE DEMONSTRATES THAT COMPETITION WILL NOT TAKE HOLD IN THE DA MARKET UNTIL COMPETITORS ARE PUT ON AN EQUAL FOOTING WITH THE INCUMBENTS

Before 1996, every European country allowed only the incumbent to use a short access code to offer wireline DA services. Competitive DA providers were therefore at a distinct disadvantage as they had to convince customers to dial premium rate service (PRS) numbers,[8] which were both longer and less well known than the incumbent's DA access code.

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[7] *See discussion infra* at II.B.2, p. 15.

[8] PRS numbers are pay-per-call numbers similar to 900 numbers in the U.S.

Thus, until 1996, European incumbents (like U.S. incumbents today) were able to use their monopolies over local service and short DA codes to dominate the DA market, regardless of whether alternative providers were able to offer better service at a lower price. Indeed, consumer demand for better and cheaper DA service typically went unfulfilled because the European incumbents regarded the provision of DA solely as a legal obligation to be met at the lowest possible cost. Facing no significant competition, these incumbents had little incentive to respond to consumers' demands. Not surprisingly, then, European incumbents consistently failed to offer consumers any but the most basic DA services (*e.g.*, simple number retrieval), and provided even these meager services at a uniformly poor quality.

Since 1996, however, many European countries have taken steps to introduce competition into their DA markets. European approaches to DA can be divided into three general categories, each of which is characterized by its treatment of the numbers used for DA:

- a *status-quo* approach, allowing incumbents to retain their exclusive right to use DA access codes;
- a compromise approach, assigning new DA access codes to alternative providers, but allowing incumbents to retain exclusive use of codes that are both shorter and better known than the new codes; and
- a pro-competitive approach, assigning new DA numbers of equal length to all DA providers, including the incumbent.[9]

[9] Although European countries have relied on alternative dialing codes rather than presubscription to create competition for DA services, this result is not based on any considered decision that alternative dialing codes are preferable to presubscription. Rather, members of the European Union have been influenced by the recommendation of the European Conference of Postal and Telecommunications Administrations (CEPT) and the European Committee for Telecommunications Regulatory Affairs (ECTRA) that a uniform DA code (starting with 118) should exist throughout Europe. *CEPT/ECTRA*

The first two approaches consistently have led to a stagnant or shrinking DA market in which consumers reap none of the benefits of competition. By contrast, the third strategy uniformly has succeeded in opening the DA market to competition. Competition, in turn, has spurred growth in the overall market for DA and enabled consumers to enjoy improved quality of service, diversified product offerings, and technological innovation. In fact, two countries that initially pursued a compromise strategy – the United Kingdom and Spain – have come to recognize the failings of this approach and have recently decided to implement a pro-competitive strategy using a fair-numbering regime.

Since 1996, then, Europe has experimented with three regulatory approaches to DA. The empirical results are unambiguous: competition will develop in the DA market only if all providers, including the incumbent, have DA numbers that are equally short and equally well known. Like the U.K. and Spain, the FCC should profit from these results and implement a fair-numbering regime through either 411 presubscription or 411XY.

A. Countries that Have Allowed the Incumbent to Retain Its Short Code Have Not Been Successful in Eliminating the Incumbent's Monopoly Power

Countries that take no steps to eliminate the incumbent's monopoly over DA services, or take limited steps that are ineffective, are unlikely to experience competition. Several European countries that have attempted to introduce competition for DA services have failed to do so, due to their unwillingness to take the necessary measures. As the Belgian, Italian, Dutch, Austrian, Danish, and French experiences all illustrate, it is not

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Recommendation of 4 December 1997 on Numbering Access to Voice Directory Enquiry Services, ECTRA/REC (97)01.

enough merely to assign new DA codes to competitive providers. Efforts to open the DA market to competition are doomed to fail as long as the incumbent is allowed to retain exclusive control of a short DA access code that is already well known to the public.

1. Belgium

Although the Belgian regulator has allowed alternative providers to have short access numbers, it has not eliminated the incumbent's long-standing default codes.[10] In addition, the regulator has not required carriers to allow end-user customers to be able to use the new short access numbers to reach alternative providers.[11] As a result, the incumbent, Belgacom, remains the dominant provider of DA services. The results have been predictable. Last year, Belgacom nearly doubled its retail rates for DA services in English, a classic display of the effects of a monopoly where price is unconstrained by market forces.[12] In addition, analysts have judged the Belgian DA market to be "relatively underdeveloped."[13] As the Pelorus Group notes, "Belgium's DA volume was among the lowest in northern Europe,"[14] despite the fact that Belgium has numerous international organizations and a great deal of cross border trade that normally would be expected to generate relatively high volumes of DA requests.[15] The Pelorus Group concludes that competition for DA will not develop in Belgium until the regulator

[10] As a country with multiple official languages, Belgium has separate short codes for Flemish, French, German, and English DA.

[11] *See* Pelorus Group: "Directory Assistance Markets in Northern Europe" (2001) at 149.

[12] *Id.* at 151 ("A new rate of 88 francs, a leap of 95.5 percent, went into effect in March 2001 for the service in English.").

[13] *Id.* at 148.

[14] *Id.*

[15] *See Id.* at 148.

eliminates the existing default codes and allows alternative DA providers to compete on an equal footing with the incumbent.[16]

2. Italy

Historically, Telecom Italia has provided DA services using a two-digit abbreviated code (12). In 2001, Italy opened the 892XXX range to competitive DA service providers, prompting several new competitors to enter the market. These new entrants were largely unsuccessful, however, because they were unable to compete against the incumbent's well-established short code. As a result, most independent DA service providers have withdrawn from the market, and Telecom Italia still has more than 98% of the Italian DA market. Would-be competitors have dropped out even though other conditions in Italy favor alternative DA service providers: *e.g.*, subscriber listings are available for free; billing and collection costs are reasonable; and DA service providers are permitted to interconnect for the same rate as carriers. Clearly, the decisive factor preventing alternative DA providers from competing against the incumbent is the incumbent's ability to retain the shorter, better known two-digit dialing code while competitive providers must establish their brands around unfamiliar new six-digit numbers. The Italian experience therefore reinforces the fact that only a fair numbering regime – in which no DA provider has a shorter or more recognized code than any other – can ensure sustainable competition for DA services.

3. The Netherlands

The Netherlands attempted to open its DA market to competition in the early 1990s by allowing alternative DA providers to use PRS numbers. In attempting to foster

[16] *Id*. at 150**.**

competition via PRS, the Netherlands has gone further than some other regulators by restricting the incumbent's use of the default code (118) to basic DA services, though the incumbent is still required to provide these basic DA services at a regulated price.[17] All of the incumbent's other DA services (including international) must be offered on PRS numbers.

Despite these efforts, only the incumbent, KPN, currently offers DA services on PRS numbers. No alternative players have entered the arena because they, unlike KPN, may not use 118 or any other short code.[18] Today, competition in the Netherlands is basically non-existent, although other conditions for offering DA, such as access to databases, are relatively pro-competitive.

Recently, the Dutch regulator announced a possible change of the numbering regime to 118XX, encouraging several would-be competitors to take preparatory actions. For instance, Denda has announced its market entry, prompting KPN to begin investing in its DA service. The Pelorus Group succinctly summed up the situation in the Netherlands, stating that: "Usually among the most technically progressive of Europe's former PTTs, KPN was not so in the case of DA services. Lacking the pressure of competition, it had allowed this service to languish. It was only with the rise of competition [in reaction to the announced possible change to 118XX] that KPN decided to begin a major upgrade of its DA resources and offerings in 2001."[19]

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[17] *See id.* at 145.

[18] *See id.* at 144-145.

[19] *Id*. at 146.

4. Austria

Austria introduced a new number range, 118XX(X), for all competitive DA service providers in 1997/1998,[20] but allowed the incumbent to retain exclusive control of its well recognized 1181 code. As a result, even though a number of companies tried to enter the Austrian DA market, not a single one was successful, and Telekom Austria continues to dominate the market. Because access to other DA resources is relatively equal, the only plausible explanation for the persistently monopolistic character of the Austrian DA market is the advantage conferred on the incumbent by its ability to retain a code that is significantly better known and shorter than its competitors' codes. Telekom Austria's continuing monopoly in DA services is detrimental to end users, as the quality and range of services remain poor, and the size of the Austrian DA market continues to decline.

5. Denmark

In 1998 Denmark changed its numbering rules for DA services.[21] Even under the new Danish numbering regime, however, the incumbent, Tele Danmark, retained its existing 118 code, while other providers had to use longer 18XX codes. As a result, Tele Danmark retains 96% of the wireline and wireless DA market.[22] The Pelorus Group remarks that the

> [l]ack of substantial competition in DA services was due in part to the reluctance of national telecoms regulator Telestuhlsen to take some necessary steps for liberalizing the market. First, it had not revamped access codes to help level the playing field for newcomers. TDK retained the significant advantage of using the

[20] *Bundesminister für Wissenschaft und Verkehr (1997): Nummerierungsverordnung.*

[21] TDK (Dec. 1998): Executive Order No. 934 on the *Overall Danish Numbering Plan.*

[22] Pelorus Group at 172.

> 118 number. Other providers had to use four-digit codes. Secondly, as noted, it did not require carriers to give their customers the freedom to access alternative DA services, further constraining possibilities for other providers.[23]

The Danish experience strongly suggests that allowing the incumbent to retain a well-established DA access code that is shorter than that of its competitors confers an insurmountable competitive advantage on the incumbent.

6. France

In 2000, the French regulatory authority, ART, opened the 32XX range to competitive DA service providers. That same year ART also decided to give competitive DA service providers equal access to subscriber listings, billing systems and networks.[24] However, ART has allowed the incumbent, France Telecom, to retain its traditional short code number 12. As a result, no company other than France Telecom currently provides wireline DA service in France. The incumbent has maintained its dominance because would-be competitors, having learned from the experiences in other European countries, no longer believe they can compete against a well-established short code.[25] As every European DA provider has learned by now, competition in the DA market cannot be sustained unless a fair numbering regime is first put into place. To be effective, the numbering regime must put *all* providers – including the incumbent – on the same competitive footing.

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[23] *Id*.

[24] L'Autorité de Régulation des Télécommunications, *Décision n° 00-1194 de l'Autorité de régulation des télécommunications en date du 15 novembre 2000 se prononçant sur un différend entre Sonera France et France Télécom relatif à l'accès au réseau de France Télécom pour la fourniture d'un service de renseignements téléphonique* (2000).

[25] *See* Pelorus Group at 138-139 (France Telecom's retention of its "traditional short-code number 12 . . . . will continue giving it a powerful competitive edge.").

B. Countries that Have Eliminated the Incumbent's Default Code Have Succeeded in Opening the DA Market to Competition

Germany and Ireland have succeeded in bringing competition – with all its attendant benefits – to the DA market. These countries' successes were based on their willingness to implement an equitable numbering scheme that allowed new providers to compete with the incumbents on equal terms.

1. Germany

In the early 1990s, Germany attempted to foster a competitive environment for DA services by opening PRS numbers to competitive DA providers. However, only the incumbent Deutsche Telekom (DT) had a short code (01188), while competitors had to use PRS numbers. No competitor emerged until 1996, when Telegate received a short code (01199) from the regulator. Although the basis for competition theoretically existed, DT remained the dominant provider because its old short code was much better known than the one held by Telegate.

In 1997, the German regulatory body implemented new measures designed to open the DA market to competition.[26] Specifically, the government withdrew the incumbent's old DA code and assigned new 118XX numbers to all DA service providers, including the incumbent. As a result of these changes, approximately forty new companies have entered the German DA market in the last four years, and Deutsche Telekom has lost 35% of the DA market to competitors.[27] At the same time, consumers

[26] BMPT (1997): *Vorläufige Regeln für die Zuteilung von Rufnummern für Auskunftsdienste*.
[27] *See Telegate 2001 Annual Report* at 15.

have benefited greatly, enjoying better quality of service from all DA providers, including the incumbent. For instance,

- The availability of DA has improved vastly. Before 1997, approximately 100 million calls were abandoned each year (*i.e.*, callers voluntarily discontinued calls before talking to an operator, typically because of long waits or busy signals). This figure has now fallen dramatically.

- DA operators today are friendlier, more helpful and more customer oriented.

- Accuracy has improved greatly: *e.g.,* the quality of searches and correctness of numbers announced have improved considerably, reaching 98% accuracy rates, and operators make an effort to find the right number and answer all customer questions.

- Customers can now reach live operators (as opposed to automated announcements), and thus are better able to ask specific questions and receive individually-tailored responses.

The advent of competition has also prompted the introduction of new services, including, for example:

- Foreign language DA in English and Turkish;

- The ability to request multiple listings during one call;

- Free call back if the number is not found within a certain period of time;

- Call completion and call reconnect;

- Delivery of numbers via other channels (*e.g.* short message service [SMS], email, fax); and

- Location-based services.[28]

[28] Location-based services allow a DA provider to provide a caller information about the location from which the call is placed. For instance, if a caller asked whether there were any Italian restaurants nearby, the DA operator could give the caller a list of the two or three Italian restaurants closest to the caller's current location.

Telegate's own service offerings provide an excellent example of the innovative services competition has brought to German consumers. A caller dialing Telegate's assigned code (11880) is greeted by a live operator. If the caller simply needs the name or number of a person or a business, the operator will provide the requested information and terminate the call, or provide call completion if the customer so requests. In either case, Telegate will electronically send the number, via text messaging or SMS, to the customer's phone so that the customer does not have to write down the number. A caller may also obtain a variety of more advanced services or information from a Telegate operator. For instance, a customer may request not only the phone number but also the business hours of a particular shop. A caller seeking to make travel plans may be connected to a second Telegate operator ready to provide train or flight schedules. A caller seeking detailed information about the weather in preparation for a sailing trip can similarly ask a Telegate operator to email satellite photos or updated weather maps.

As these facts illustrate, the implementation of a fair numbering regime can produce a wide variety of benefits in a short period of time. Moreover, such benefits can accrue even if other conditions for providing DA services remain relatively poor. For instance, the ability of alternative providers in Germany to interconnect with carriers remains problematic. While interconnection conditions have significantly improved over the last few years,[29] they are still the subject of dispute between the incumbent and competitors. Competitive DA providers also face unfavorable treatment in gaining access to subscriber listings. Although all DA service providers have access to subscriber

[29] Competitive DA service providers were recently allowed to interconnect at the same regulated rates as other carriers.

listings, the price for such access remains significantly higher than in the United States and in many other European countries.[30] Likewise, billing costs for DA are relatively high, and competitive DA numbers are not displayed in the information pages of German phone books.

Despite these obstacles, competition has flourished in the German DA sector, and German consumers have reaped the benefits. The German experience thus demonstrates that robust competition will develop for retail DA services if, and only if, all providers, including the incumbent, are assigned codes of equal familiarity and length (whether one code through presubscription, or multiple new codes).

2. Ireland

In 1999, the Irish regulator opened the Irish directory assistance market to competition by changing the numbering rules for DA services.[31] The regulator withdrew the incumbent's short code and gave all DA service providers new numbers in the 118XX number range. Competition developed rapidly once all competitors were placed on an equal footing.

Eircom, the incumbent, lost at least 34% market share in the first two years,[32]

[30] In Germany price amounts to approximately 5 cents per transaction, compared to Italy and Spain (no costs) and the U.K. (approximately 1.2 cents). In the United States the amount varies depending on the provider and the customer, but is approximately 1.5 cents per transaction.

[31] ODTR (1998): "Directory Information Access Codes", and ODTR (1999): "Directory Access Codes: Completing the change from 119X to 118XX."

[32] *See* Pelorus Group at 159 (stating that Conduit, one of Europe's leading alternative providers, had a 34 percent market share as of 2001, while "Eircom retained the other nearly two-thirds of the market."); *Conduit plc 2001 Annual Report* at 14 (estimating its market share in Ireland "to be between 35% and 40%").

while the overall DA market grew by 30% in just one year.[33] As in Germany, competition led to a range of new products and vastly improved quality of service. As a result, Ireland represents "one of the most encouraging examples for other European DA markets that have been in the doldrums and are about to undergo liberalization."[34] Although it lost market share, Eircom has increased the total number of DA calls and resulting revenues, while finally taking steps to improve its DA offerings and introduce new DA products and services.

C. United Kingdom: Learning the Hard Way

In 1997, the U.K. regulator, Oftel, launched its first effort to open the DA market to competition.[35] The resulting "Statement on the Provision of Directory Information Services and Products" reformed the provision of DA services, and granted alternative providers access to the relevant subscriber listings for the first time.[36] With respect to numbering, however, Oftel concluded that the then existing numbering regime – under which telecommunications operators received a short default DA code (192), and all other DA service providers received longer codes (PRS numbers with 7 to 10 digits) – would be sufficient to generate competition.[37] Contrary to Oftel's prediction, however, competition did not develop in the DA market. Therefore, in November 2000, Oftel

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[33] Pelorus Group at 158 ("Volume [for DA in Ireland] jumped some 30 percent during 2000.").

[34] *Id*. at 158.

[35] Oftel, "Provision of Directory Information Services and Products" (Sept. 1997).

[36] Oftel, "Statement on the Provision of Directory Information Services and Products" (Sept. 1998).

[37] *Id*.

initiated another consultation seeking to improve the competitive situation.[38] After a lengthy consultation, including an extensive cost-benefit analysis, Oftel concluded that fair numbering (to be achieved by allocating five-digit 118XX codes to individual DA service providers) was the best way to introduce competition in the British DA market.[39]

In reaching this conclusion, Oftel relied on empirical evidence showing that the introduction of fair numbering in other European countries had fostered competition and provided many benefits to consumers. In particular, Oftel noted that the experiences of Germany and Ireland showed that consumers are sensitive to lower DA prices, and tend to make "increased use of the wider range of [DA] services offered in a competitive market."[40] Oftel found that countries that have adopted fair numbering have "experienced a growth in the range of services available to consumers and, in the case of Ireland, in the size of the overall market. Competing service providers have picked up significant market share and there has been competition on price."[41]

Oftel's decision to abandon its initial approach in favor of fair numbering underscores a remarkable fact. Since 1996, Europe has essentially served as a vast "laboratory" for testing the relative merits of differing regulatory approaches to DA. The results are crystal clear: fair numbering engenders competition, lower prices, innovation, better quality of service, satisfied customers, and a growing DA market; the absence of fair numbering produces none of these results. It is rare that the success of one regulatory

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[38] Oftel, "Access Codes for Directory Enquiry Services," Consultation Document (Nov. 2000).
[39] Oftel, "Access Codes for Directory Enquiry Services" (Sept. 2001) at iii.
[40] *Id*. at 9.
[41] *Id*.

approach and the failure of alternative approaches are demonstrated so starkly. The Commission should profit from these results and move quickly to adopt a fair-numbering regime for DA services.

III. THE COMMISSION SHOULD OPEN THE DA MARKET TO COMPETITION BY IMPLEMENTING EITHER 411 PRESUBSCRIPTION OR ALTERNATIVE DIALING CODES

There are at least two approaches the FCC can take to implement the type of fair-numbering scheme that is necessary to bring competition to the U.S. market for wireline DA services: preserving the existing 411 code and allowing customers to presubscribe to the provider of their choice; and eliminating the 411 code and allowing customers to dial a unique alternative number (*e.g.*, 411XY) to reach the DA provider of their choice. Either alternative would accomplish the critical goal of stripping the incumbents of the unfair competitive advantage they currently derive from their control over 411.

In either case the goal would be to neutralize the advantage incumbent LECs would otherwise derive from possessing a large embedded base of customers. 411 presubscription, coupled with a fair balloting-and-allocation procedure, would accomplish this goal by ensuring that the existing users have an opportunity to choose from a wide array of DA providers. Alternatively, replacing the incumbent's 411 code with a new 411XY code would eliminate the LECs' embedded base advantage and ensure that all DA providers could compete for customers.

Under either approach, consumers would reap several important benefits, including:

- better service (*e.g.,* improved accuracy, quicker response time);
- lower prices;

- more innovation (*e.g.,* call completion, locator services, concierge services);
- more targeted service for minority communities (*e.g.,* Spanish-language DA);
- rapid market growth; and
- new job opportunities.

The Commission can bring these important benefits to consumers at relatively minimal costs simply by implementing a one-time change in the way DA numbers are assigned. Both 411 presubscription and 411XY are technically feasible, and can be achieved with minimal customer disruption. Moreover, the potential for customer confusion will be small under either option, as the 411 code either will remain unchanged (if presubscription is implemented), or will be preserved as part of an alternative DA code (if 411XY is adopted).

A. Presubscription

Allowing customers to presubscribe to the 411 provider of their choice would immediately open the DA market to vigorous competition, with a minimum of inconvenience to customers. Customers would not need to memorize a new DA code, nor would most customers require any explanation regarding the purpose of "411," which is already widely recognized as the code for DA. Rather, customers would merely need to participate in a one-time balloting-and-allocation procedure designed to achieve a fair transition to a presubscription regime. Such a transition would also be both cost-effective and timely because the infrastructure needed for presubscription is already largely in place. For instance, both AIN and SS7 software are already deployed in the vast majority of central office switches.[42]

An effective balloting and allocation procedure could be modelled on the one the Commission successfully used to implement long distance presubscription in the 1980s.[43] While the Commission has the flexibility to modify certain details of the long distance procedure,[44] it should ensure that any new plan is "implemented uniformly on a fair, reasonable and timely basis across the Nation."[45]

In order to achieve this goal, any plan adopted by the Commission should include the following key elements for existing local exchange customers:

- Customer Notification: All local exchange customers that exist as of a specified date should receive written notices explaining the balloting-and-allocation procedure and informing them of their right to presubscribe to a DA provider of their choice. LECs should insert these notices in customer bills for three consecutive months prior to mailing the first ballot.

- Fair Ballot Design: Ballots must be designed so as not to provide any single DA provider an unfair advantage over others. For instance, each ballot should include the names of all potential DA providers, and LECs should devise a

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[42] On March 10, 2000, Telegate submitted to the Commission in CC Docket No. 99-273 a detailed plan for 411 presubscription (*Telegate Proposal*), including an in-depth technical and cost analysis prepared by John M. Celentano (*Celentano Affidavit*) and an economic analysis by Stephen E. Siwek (*Siwek Affidavit*). For discussions of current AIN and SS7 deployment, *see Celentano Affidavit* ¶¶ 9, 16-24.

[43] *See generally In re Investigation of Access and Divestiture Related Tariffs*, Memorandum Opinion and Order, 101 F.C.C. 2d 911, App. B (1985) (*Allocation Order*) (setting forth detailed requirements of balloting-and-allocation procedure for long distance presubscription), *recon. denied*, 102 F.C.C. 2d 503 (1985). *See also Allocation Order* ¶¶ 24, 25 (recognizing that the Commission must issue "detailed guidelines" but affirming that the costs of implementing such a plan, "including the mailings, tabulation of ballots and orders, allocation on non-presubscribed lines and switching machine updates, ... are not prohibitive[.]").

[44] The Commission may, for instance, decide to take advantage of new technologies to allow balloting via automated voice response or the Internet.

[45] *Allocation Order* ¶ 25.

method to give DA providers an equal opportunity to appear first on the ballot (*e.g.*, randomly changing the order in which providers appear).[46]

- Voter Inclusiveness: The balloting process should be as user-friendly and forgiving as possible. For instance, the initial ballot should be accompanied by a self-addressed envelope and a cover letter that clearly explains presubscription and that asks customers to return the initial ballots within a specified time period. Customers should also have the option of independently contacting their LEC (*e.g.*, by phone, mail, or Internet) to presubscribe.[47]
- Fair Allocation Procedure: Customers that do not choose a DA provider by ballot before a predetermined date would be allocated among the various possible providers according to the proportion of customers that did vote.[48]

In addition to balloting-and-allocation for existing customers, the Commission should also ensure that new customers are presented with a choice of DA providers. To prevent anti-competitive behavior, the Commission should require LECs to follow a pre-approved script in all communications with new customers regarding presubscription, including customer notifications and responses to customer queries.

A plan that incorporated all of these elements would ensure fairness without imposing prohibitive costs.[49] The benefits of balloting-and-allocation would justify the relatively modest one-time implementation costs involved.

The Commission's decision not to require states to implement balloting and allocation for intraLATA long distance presubscription is not apposite to the DA

[46] *See id.* App. B ¶ 7.

[47] *See id.* App. B ¶ 9.

[48] *See id.* App. B ¶ 17.

[49] Telegate estimates that the cost of conducting balloting and allocation for DA presubscription would be a one-time cost of $1.13 per line. *Telegate Proposal* at 17, *citing Siwek Affidavit* ¶ 31. This cost is relatively small given the overall size of the DA market as it exists today (over $3 billion in annual revenues), and the much larger size this market will attain once competition is introduced.

context.[50] In the intraLATA context, interexchange carriers (IXCs) and LECs were on relatively equal footing when competition was introduced in intraLATA toll services: each group of carriers had its own embedded base of customers receiving either interLATA service from the IXC, or local exchange service from the LEC. In the DA context, by contrast, alternative providers such as Telegate have no embedded base to rival that of the LECs. Alternative DA providers therefore face an uphill battle at the outset, and will depend on equitable balloting-and-allocation procedures such as those described above to place them on an equal footing with the LECs.

B. Alternative Dialing Codes

An alternative method for opening the DA market to competition would be for the Commission to replace the existing 411 code with a new range of dialing codes to be assigned to all DA providers, including the incumbent LECs. As explained at length above, the European experience proves that such a strategy can rapidly transform a stagnant DA market into a fully competitive one, resulting in a wide variety of benefits for consumers.

In the United States, adopting new dialing codes would be technically feasible and would eliminate the need for balloting and allocation. In addition, by including 411 as part of any new codes (*e.g.*, 411XY), the Commission could reduce customer inconvenience and minimize the chances for confusion.[51] The Commission could also

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[50] *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98, Second Report and Order, 11 FCC Rcd 19392, ¶¶ 73-77 (1996) ("*Local Competition Second Report and Order*").

[51] If the Commission decides not to open up the 411 code to all competitors through 411 presubscription, it should bar the incumbent LECs from using 411 for their DA services.

ease the transition to 411XY by ensuring that any customer that dialed 411 either would be automatically connected to a randomly chosen 411XY provider, or would hear a recorded intercept message explaining that the customer needs to dial two extra digits in order to receive DA.[52]

IV. THE COMMISSION HAS AUTHORITY TO IMPLEMENT CHANGES TO NUMBERING ASSIGNMENTS IN ORDER TO FURTHER THE PRO-COMPETITIVE GOALS OF THE ACT

As explained below, the FCC has ample authority under the Act to implement a pro-competitive numbering regime for DA services, including at least two independent statutory provisions: section 251(e) and section 201(b). Each of these statutory provisions allow the FCC to take all necessary steps in crafting a pro-competitive remedy: *e.g.*, mandating 411 presubscription or alternative DA dialing codes.

A. The Commission May Mandate 411 Presubscription or Assign Alternative DA Dialing Codes Pursuant to Its Plenary Authority over Numbering Administration

The Commission has "plenary authority" to administer numbering resources pursuant to section 251(e) of the Act.[53] As the *NPRM* observes, this plenary authority

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As the European experience shows, any efforts at promoting competition for DA services will fail as long as the LECs retain exclusive control over 411.

[52] This recording might be similar to those played after new area codes are introduced in a calling area. *See*, *e.g.*, *In re Implementation of 911 Act, The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Fifth Report and Order, CC Docket No. 92-105, 16 FCC Rcd 22264 ¶ 37 (2001) ("we have previously required a standard intercept message where a dialing pattern change has occurred, pursuant to our exclusive numbering jurisdiction under section 251(e)(1).").

[53] *See, e.g., Common Carrier Bureau Directs the NANPA to Make Available for Assignment Additional Feature Group D Carrier Identification Codes*, Public Notice, 16 FCC Rcd 12844, n.1 (2001); 47 U.S.C. § 251(e)(1) (authorizing the Commission to "create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis[,]" and granting the

"extends to the assignment of all N11 numbering codes including 411."[54] Of the eight N11 codes available, the Commission has assigned five for nationwide use (211, 311, 511, 711, and 911).[55] The 411 code, although popularly associated with DA, has never been permanently assigned by the Commission for that purpose.[56]

Because the Commission retains its full authority to assign 411 for the provision of DA, and because this authority is plenary, the Commission may require presubscription as part of that assignment or attach other conditions as it sees fit. Alternatively, the Commission may, pursuant to its plenary authority over numbering resources, eliminate 411 as an access code used for DA and assign a different code (*e.g.*, 411XY) for the same purpose.

B. The Commission Has Ample Authority under Section 201(b) to Mandate 411 Customer Presubscription or Alternative DA Access Codes

As a long line of precedents makes clear, section 201(b) confers broad authority on the Commission to promote competition in telecommunications or telecommunications-related services.[57] In one particular relevant precedent, the

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Commission "exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States").

[54] *NPRM* ¶ 11 (citing *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105, First Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5572, 5579-80 (1997).

[55] *See Petition by the United States Department of Transportation for Assignment of an Abbreviated Dialing Code (N11) to Access Intelligent Transportation System (ITS) Services Nationwide*, Third Report and Order on Reconsideration, 15 FCC Rcd 16753 (2000); *In re Implementation of 911 Act, The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Fourth Report and Order and Third Notice of Proposed Rulemaking, WT Docket No. 00-110, CC Docket No. 92-105, 15 FCC Rcd 17079 (2000).

[56] *See NPRM* ¶ 11, n.42.

[57] *See*, *e.g.*, *In re Radiofone, Inc. v. BellSouth Mobility, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 6088, ¶ 33 (1999) (acknowledging "the broad 'public interest' and

Commission mandated rules and procedures for implementing equal access and customer presubscription to an interexchange carrier.

Specifically, in the *Allocation Order*,[58] the Commission held that a balloting-and-allocation procedure (allowing customers to presubscribe to a long distance carrier of their choice) was "more consistent with protecting the competitive process than default, which automatically assign[ed] all customers to only one competitor" – namely, AT&T.[59] The *Allocation Order* went on to apply section 201(b):

> We also find under Sections 201(b) and 202(a) of the Communications Act, 47 U.S.C. §§ 201(b), 202(a), that "default" is an unreasonable and discriminatory practice. The BOCs through their tariffs automatically presubscribe a customer to AT&T and only change that presubscription to another carrier upon request of the customer. As a result of this "default" procedure, AT&T's customers may acquire its services by doing nothing. The other IXCs must, however, aggressively advertise in order to get their potential customers to take an affirmative action and select an IXC. This practice clearly accords AT&T preferential treatment and gives it an advantage over its competitors. The marketing advantage that AT&T enjoys is not predicated on any quality or pricing difference but rather on its historical monopoly position.

'just and reasonable' standards set forth in section 201(b)"); *Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, Memorandum Opinion and Order on Reconsideration, 2 FCC Rcd 3035, ¶ 110, n.209 (1987) (explaining that Commission has jurisdiction under section 201 through 205 to control discrimination in the provision of ONA elements to competing providers of advanced services); *Amendment of Section 64.702 of the Commission's Rules & Regulations, Second Computer Inquiry*, Final Decision, 77 F.C.C. 2d 384, ¶¶ 142, 186 (1980) (acknowledging "broad consumer rights under Section 201(b) and 202(a)" and "corresponding carrier responsibilities", and citing *inter alia* section 201 as authority to require a separate affiliate for competitive offerings).

[58] *In re Investigation of Access and Divestiture Related Tariffs*, Memorandum Opinion and Order, 101 F.C.C. 2d 911 (1985) ("*Allocation Order*"), *recon. denied*, 102 F.C.C. 2d 503 (1985). For a recent summary of these orders, *see In re Operator Communications, Inc., d/b/a Oncor Communications, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 12506, ¶ 2 (1999).

[59] *Allocation Order* ¶ 21.

> "Default" is, therefore, unreasonable and contrary to the public interest because it favors one carrier over others without a justified showing of necessity and denies the public the benefits of competition.[60]

The Commission's reasoning regarding long distance dialing applies with equal force to DA dialing. As with the AT&T long distance "default" scheme, the *status quo* allows incumbent LECs to do nothing and retain the vast majority of DA customers. This retention of customers is not predicated on any quality or pricing difference, but rather on the incumbent LECs' historical monopoly position. Like AT&T, the incumbent LECs have no plausible argument that necessity justifies their failure to implement 411 presubscription.[61]

As with "default," therefore, the current DA numbering scheme is unreasonable and contrary to the public interest because it favors incumbents over competitors without a justified showing of necessity and denies the public the benefits of competition. Given developments in technology over the past decade (*e.g.*, AIN), it is now technologically feasible for consumers to choose one provider for local service and another for DA. Under these circumstances, any scheme resembling "default," including the current DA numbering scheme, is an unreasonable practice that violates section 201(b) of the Act. The Commission therefore has ample legal authority under the Act to mandate technologically feasible remedies, such as 411 presubscription or alternative DA access codes, to prevent the incumbent LECs from continuing to engage in their current unreasonable practices.

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[60] *Id*. ¶ 22. *See also id*. ¶ 23 (finding "default" to be discriminatory under section 202(a) because "only AT&T obtains the benefit of receiving all undesignated traffic").

[61] For instance, as described above, technologies exist to enable incumbent LECs to implement 411 presubscription in a timely manner and with minimal costs.

V. THE COMMISSION SHOULD IMPLEMENT 411 PRESUBSCRIPTION OR ALTERNATIVE CODES IN A TIMELY AND FAIR MANNER

It should take no more than a year to implement fully either 411 presubscription or 411XY and bring competition to the DA market. Based on Germany's implementation of alternative DA codes, for instance, approximately nine months should be sufficient to allocate numbers and implement new DA codes. During any transitional period, the Commission could ensure that appropriate safeguards are in place to minimize customer confusion. For instance, the Commission could require the incumbent LECs to include inserts in monthly telephone bills and provide recorded messages in response to 411 calls alerting customers to the upcoming changes. At the same time, both competitors and incumbents would be free to advertise their new DA numbers and service offerings.

The Commission should also ensure that competition is implemented in a fair manner. In particular, incumbents should be required to handle billing and collection for DA service providers at a reasonable price because it is not economically feasible for new entrants to provide their own billing or rely on third-party billing-and-collection providers.[62] Unlike interexchange customers, who typically generate high volumes of

[62] Several European regulatory authorities have implemented such measures. *See*, *e.g.*, Regulierungsbehörde für Post und Telekommunikation, *Decision Gz.: BK3a-99/032* (1999); Comisión de Mercado de las Telecomunicaciones, *Contestacion a la consulta realizada por Telegate Communication Systems, S.A. y Sonera Corporation con relación al régimen jurídico de los servicios de información telefónica sobre números de abonados* (2001); Autoritaper le Garanzi nelle Comunicazioni, *Disposizioni ai fini del corretto adempimento ai contenuti della delibera n. 10/00/CIR da parte di Telecom Italia*, Delibera 18/01/CIR (2001); L'Autorité de Régulation des Télécommunications, *Décision no. 00-1194 de l'Autorité de régulation des télécommunications en date du 15 novembre 2000 se prononçant sur un différend entre Sonera France et France Télécom relatif à l'accès au réseau de France Télécom pour la fourniture d'un service de renseignements téléphonique* (2000).

calls, the average DA customer typically makes no more than a few DA calls per billing cycle, and the resulting charges rarely amount to more than a few dollars per month per customer. Therefore, unlike interexchange carriers, DA providers have no practical alternative to the incumbent LEC for billing and collection.

Although competitive DA providers should be required to reimburse incumbents for any reasonable billing and collection costs attributable to competitors, the Commission should recognize that incumbents have both the incentive and the ability to force competitive DA providers out of the market or discourage them from even entering the market. Because they set the price for both billing and collection (an input required by competitors) and retail DA services, incumbent LECs can raise rates for billing and collection in order to create a "price squeeze," making it impossible for competitors to profitably provide DA service. The Commission should prevent this type of anti-competitive behavior by capping the amount incumbent LECs can charge competitive DA providers for billing and collection costs, both on a per-message and per-bill basis.

VI. CONCLUSION

For the foregoing reasons, Telegate respectfully submits that the Commission should move expeditiously to open the DA market to competition, by implementing either 411 presubscription or alternative dialing codes, such as 411XY.

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